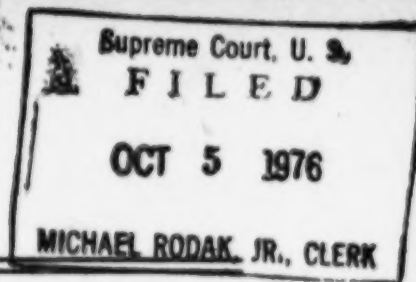


**76-485**



**IN THE  
Supreme Court of the United States  
OCTOBER TERM, 1976**

**No.**

**RALPH VERNON FORD, M.D.,  
Petitioner-Appellant,**

**versus**

**HARRIS COUNTY MEDICAL SOCIETY, ET AL,  
Respondents-Appellees.**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**DR. SAM D. RHEM  
216 Town & Country Bank Bldg.  
Houston, Texas 77024  
ATTORNEY FOR APPELLANT  
RALPH VERNON FORD, M.D.**

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IN THE  
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Petitioner-Appellant,  
  
versus

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Respondents-Appellees.

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT  
\_\_\_\_\_

The Petitioner, Ralph Vernon Ford, M.D., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on July 19, 1976.

OPINION BELOW

The appendix includes published Opinion of the Fifth Circuit Court of Appeals (\_\_\_\_ F.2d 4528, rendered July 19, 1976).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on July 19, 1976. This petition for

certiorari is filed within ninety (90) days of that date. The Supreme Court of the United States is invoked under 28 U.S.C. §1254(1).

### QUESTIONS PRESENTED

1. Whether the Appellant, a licensed physician, has a Constitutional right under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States to representation by legal counsel before a local medical society, when the medical society is sitting as a tribunal to arbitrate a complaint by an insurance company in reference to a fee dispute.

2. Whether the Federal District Court and the Court of Appeals for the Fifth Circuit erred in denying jurisdiction under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.

### STATUTORY PROVISIONS INVOLVED

Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.

### STATEMENT OF THE CASE

This case involves Ralph Vernon Ford, M.D., a licensed physician and member of the Harris County Medical Society in Houston, Texas. On January 20, 1975, a complaint was filed by American General Insurance Company complaining of fees charged by Dr. Ralph Vernon Ford. The patient did not complain, but rather the insurance company who held a contract with the patient.

Dr. Ford sought to be represented before the Medical Society by licensed legal counsel. This request was repeatedly denied. A temporary and permanent injunction was applied for in the District Court of Harris County, Texas, 127th Judicial District. The petition was denied.

Subsequently, Dr. Ford sought relief in the Federal District Court for the Southern District of Texas, alleging denial of basic Constitutional rights and guarantees under the Fifth, Sixth and Fourteenth Amendments. Dr. Ford sought jurisdiction of the Federal District Court because of alleged violations of his Constitutional rights and alleged violations of 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3).

The Federal District Court, on November 20, 1975, dismissed the requested relief for lack of subject matter jurisdiction.

Dr. Ford appealed to the United States Court of Appeals for the Fifth Circuit. On July 19, 1976, in a per curiam opinion, the Court of Appeals affirmed the opinion of the Federal District Court.

From the opinion of the Court of Appeals for the Fifth Circuit, Dr. Ford appeals.

### REASONS FOR GRANTING A WRIT

1. The Appellant, a licensed physician, has a Constitutional right under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, to representation by legal counsel before a local medical society.

It is easy to see that without the right of legal representation and the right of cross-examination, essential facts, both on the complaining party's side and on the defending physician's side, cannot be properly developed in a closed hearing where testimony is isolated. The Court took notice of this problem in the Committee on Professional Ethics and Grievances of the *Virginia Allen's Bar Association vs. Johnson*, 447 F.2d 169. Furthermore, and of tantamount importance, if the Court continually denies members of private organizations the right to counsel and representation before those organizations, then it in effect carves out an amendment not intended by the Constitutional fathers, that is, the Constitution of the United States of America will be held in abrogation in all private matters before private societies. Needless to say, even the most crass of legal scholars could not say the Constitution of the United States of America was intended to apply only in public or governmental affairs, and that private citizens could go about doing their business, abrogating Constitutional rights and inciting Constitutional violations under the shield of private organizations. The Appellant states that the argument follows to say that if a person is an American citizen, he is entitled to the protection of the Constitution of the United States of America and American citizenship in all things entitles Constitutional guarantees and the right of counsel, which is sacred and indigenous in our way of life. The American Medical Association, in its official organ of publication, *The Journal of the American Medical Association*, in its September 16, 1974 issue, published a commentary on the right to counsel before a medical society, at Vol. 229, No. 12, page 1656 (See appendix). In that opinion, the Medical Society said, "in many non-

criminal contexts, in the past several years, courts in several states have decided that a right to counsel is so basic that it cannot be denied." Further, in the same paragraph, the writer for the American Medical Association goes on on to state "in view of all the decisions on this point in recent years, it is highly unlikely that a court will accept the decision of a medical society to bar the attorney for the physician involved, from the hearing." Cases cited for the review of this opinion are *Cadilla vs. Board of Medical Examiners*, 103 Cal. Rpt. 455, (California 1972); and *Zimmerman vs. Board of Regents*, 294 N.Y.2d 433, (New York 1968).

The Appellant would further show to this Honorable Court that the enlightened thinking of the Supreme Court of the United States of America in *Goldfarb vs. The Virginia State Bar*, clearly indicates that the Supreme Court, in upholding the Constitutional standards, is becoming more incisive in looking at the exclusionary status of organizations when it comes to the statutory and Constitutional law of the United States of America. The Court, in *Goldfarb*, sought to determine the purpose of the Sherman Anti-Trust action, that is, to prevent any competitive prices. In a like analogy, the Appellant states that by looking at the purpose of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America, a similar analogy can be drawn. The purposes of these Amendments are categorically the right to representation, the right to confront the witness against one, and due process. These rights are guaranteed by the Constitution of the United States of America. To allow a private organization, such as the Harris County Medical Society, to unilaterally abrogate the Constitution would in no doubt give all

such private organizations absolute impunity and would in no question place the Constitution of the United States of America at odds with such an organization. To allow such thinking would be to give an absolute strike at the purpose of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America. There has been a long line of established law and cases in this land that persons belonging to private organizations and brought before these organizations, do not necessarily have the right of representation by counsel. The Appellant insists in this case, however, that the existing law does not clearly reflect the needs of the people. Nor does it protect the Constitutional guarantees indicated and so long labored over by our forefathers. The Fifth and Sixth Amendments to the Constitution require adequate legal representation and the Fourteenth Amendment makes due process and expedition of guaranteed and sacred legal rights applicable to the states and all citizens and persons falling within the jurisdiction of the law of the United States of America. In today's highly modern and complex society, which is enmeshed and engrossed in an amoebic-like technology, it is incumbent upon the Court to look behind the meaning of private organizations and to see their actual existence as they are in today's society. The Harris County Medical Society, although a voluntary operation, reaches its tentacles out into every facet of its members' lives. It provides travel and entertainment arrangements, it provides an insurance program, it collects and assesses its members dues to involve in political activities and to sponsor political candidates and to forward its own political issues. In the instant case, the Harris County Medical Society is attempting to negotiate third party fee contracts under the

guise of bettering professional standards. Yet, on the other hand, the Harris County Medical Society, as well as other medical societies, is constantly lobbying against third party governmental intervention into what they call the private practice of medicine.

The Appellant here is not only complaining of the potential loss of economic capability, but is also complaining, and most bitterly complaining, of his fundamental Constitutional rights. The Appellant's main argument is that the Adjudication Committee, and all other committees and arms of the Harris County Medical Society, have taken on the nature of adversary proceedings in which the committees have not attempted to provide its member with any representation, but have solely set out to adjust a fee for the benefit of a third party insurance company, which is not a member of the Harris County Medical Society. In attempting to perform such a function, the Harris County Medical Society has denied the doctor/defendant the opportunity to cross examine or to make any provisions for reporting such testimony. The Harris County Medical Society cannot claim any harm would be done to it by the mere presence of legal counsel and a court reporter at such a proposed meeting. The Harris County Medical Society, however, is jealous of its right to carry on in star-chamber-like hearings. Of this the Appellant complains and seeks redress before the Supreme Court.

In further substantiation of the Appellant's claim that his Constitutional rights are being violated, the Appellant would show this Honorable Court the most recent development in the matter at hand. As this application for certiorari was being prepared,

Appellant Dr. Ford received the following letter from the Harris County Medical Society.

**HARRIS COUNTY MEDICAL SOCIETY**  
400 Jesse H. Jones Library Building  
Houston, Texas 77030  
713-790-1838

September 7, 1976

Ralph V. Ford, M.D.  
5206 Richmond Avenue  
Houston, Texas 77056

Dear Doctor Ford:

The Board of Ethics of the Harris County Medical Society requests that you appear before it to discuss your failure to appear before the Public Grievance Committee to answer complaints against you involving the patients Alyne Dickey, Mrs. Verga L. Welles, Mrs. Vera Patterson, Steven Harris, Ph.D., Neva Clevenger and Laura L. Batula.

The meeting will be held on Tuesday, September 24, 1976, in the Board Room of the Harris County Medical Society on the fourth floor of the Jesse H. Jones Library Building and the time of 8:30 p.m. has been set aside for the meeting with you. Failure to appear before the Board of Ethics may result in disciplinary action being taken against you.

Please confirm your ability to be present at that time by telephoning Mrs. Little, the Board secretary, in the Medical Society office at 790-1838.

Yours truly,

/s/ JOHN A. WEBB, M.D.  
John A. Webb, M.D.  
Chairman  
BOARD OF ETHICS

JAW:dl

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

It is obvious from the tone of this letter that the Medical Society is relentless in its attempt to deny Dr. Ford a fair hearing with representation by legal counsel and the right to cross-examine the witnesses. The Society has now threatened disciplinary action against Appellant physician if he does not appear at its Board of Ethics meeting to discuss his failure to appear before the Public Grievance Committee to answer complaints concerning fees of the patients named in the letters. These complaints are the very basis of the instant case in which Appellant Ford seeks to have his Constitutional rights protected. Harris County Medical Society has been made fully aware by Appellant's counsel that the Judgment of the Court of Civil Appeals for the Fifth Circuit is not a final judgment, and that application for certiorari would be timely sought. In their reckless attempt to deny Appellant his Constitutional rights, they have

now threatened to discipline him if he does not appear without the benefit of legal counsel. This action by the Harris County Medical Society further gives credence to the Appellant's argument to this Court of the need for legal counsel, since now the threat of discipline is being thrust at the Appellant.

In the face of disciplinary actions, the Appellant strongly urges his right to representation by counsel before the Medical Society and asks redress from the Supreme Court.

## 2. Denial of a forum for Federal question.

This case was originally brought in the Federal District Court for the Southern District of Texas, requesting a temporary injunction and temporary restraining order and declaratory judgment under the Fifth, Sixth and Fourteenth Amendments, and under 42 U.S.C. §1983 and 28 U.S.C. §1343(3). (See Appendix) Both the Federal District Court and the Court of Appeals for the Fifth Circuit, in overruling the jurisdiction under 42 U.S.C. §1983, have completely ignored the Federal questions presented under the Fifth, Sixth and Fourteenth Amendments.

Even if the Appellant concedes that there is not enough evidence to bring this case under "color of state law", action as is required by Section 1983, there can be no doubt that serious Federal questions are presented under the Fifth, Sixth and Fourteenth Amendments.

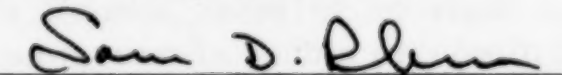
Federal jurisdiction lies clearly in all situations in which basic Constitutional rights guaranteed by the

United States Constitution are subject to violation. In examining the instant case, the Federal District Court, as well as the Court of Appeals for the Fifth Circuit, has completely overlooked the fact that the basic issue complained of was right to counsel, the right to confront the witnesses against the party, and procedural due process. These are basic guarantees embodied in the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. Such jurisdiction is basic and fundamental and cannot be denied to the Appellant. Such a denial perpetrates a Federal forfeiture of a forum and leaves the Appellant with no place to go to insure the answers to his Federal questions. The jurisdictional amount is not required in this case because the rights and violations of the rights of the Appellant are of such an inherent and basic nature that they escape pecuniary valuation. This issue was directly approached by Mr. Justice Stone in *Hague vs. Cio*, 59 S.Ct. 954, 965-971, 207 U.S. 496, 518-532; 83 Law.Ed. 1423. The Appellant therefore urges that all of the elements necessary to bring federal jurisdiction into play are present, according to all known and statutory case law.

## CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,



DR. SAM D. RHEM  
900 Town & Country Lane  
Suite 216  
Houston, Texas 77024  
(713) 467-2464

Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I certify that three copies of the foregoing petition have been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto this 4<sup>TH</sup> day of OCTOBER, 1976.

Sam D. Rhem  
Dr. Sam D. Rhem

**APPENDIX "A"**

Ralph Vernon FORD, M.D.,  
Plaintiff-Appellant,

v.

HARRIS COUNTY MEDICAL SOCIETY et al.,  
Defendants-Appellees.

No. 76-1113

Summary Calendar.\*

United States Court of Appeals,  
Fifth Circuit.

July 19, 1976.

Appeal from the United States District Court for the  
Southern District of Texas.

Before AINSWORTH, CLARK and RONEY, Circuit  
Judges.

**PER CURIAM:**

In this 42 U.S.C.A. § 1983 suit Dr. Ralph Ford alleged right to counsel before the Harris County Medical Society's Adjudication and Medical Testimony Committee. The Committee was investigating fee charge complaints against Dr. Ford, a practicing physician. Under the Society's bylaws, there is no right to counsel or cross-examination in such a proceeding. Dr. Ford contended this denied him rights guaranteed by the Fifth, Sixth and Fourteenth Amendments. Find-

\* Rule 18, 5 Cir.; *Isbell Enterprises, Inc. v. Citizens Casualty Company of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

ing no state action as required by § 1983, the district court granted defendants' motion to dismiss for lack of subject matter jurisdiction. Fed.R.Civ.P. 12(b). We affirm.

The Harris County Medical Society is a private, voluntary organization, chartered in 1950, an affiliate of the Texas and American Medical Associations. The Society obtains its revenues from membership dues and publication of the Society's bulletin. It receives no funds from the State of Texas or any governmental agency. The society has no power to issue, suspend, revoke or otherwise affect the licensing of doctors practicing in the state. This authority rests with the Texas State Board of Medical Examiners. See Vernon's Tex.Civ.Stat.Ann. art. 4495 *et seq.* A physician does not have to belong to the Society in order to practice medicine. The Society has no power or authority to enforce an order from the State Board in a disciplinary proceeding, nor in any other proceeding. There was no evidence of dissemination of information regarding professional conduct between the Society and the State Board. A proposed amendment to the bylaws that would have permitted the supplying of information to the State Board was rejected.

The thrust of Dr. Ford's argument is that the Society operates as an arm of the Texas State Board of Medical Examiners in policing the ethics of the profession. The District Court found no evidence to support this. Dr. Ford, however, points to a specific occasion when the State Board found him guilty of unprofessional conduct likely to defraud the public. Although the Society did recommend a course of action to be followed in complying with the Board's findings, this

was only done at the request of Dr. Ford himself. Whatever the ultimate sanction imposed by the Society arising from the instant complaint, it would not affect Dr. Ford's license to practice medicine.

Section 1983 requires that there be state involvement before a cause of action can be asserted thereunder. The facts found by the district court clearly indicate lack of any state involvement sufficient for § 1983 purposes. See *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S.Ct. 1965, 32 L.Ed.2d 627 (1972); *Golden v. Biscayne Bay Yacht Club*, 530 F.2d 16 (5th Cir. 1976) (*en banc*); *Greco v. Orange Mem. Hosp. Corp.*, 513 F.2d 873 (5th Cir.), *cert. denied*, \_\_\_ U.S. \_\_\_, 96 S.Ct. 433, 46 L.Ed.2d 376 (1975), 44 U.S.L.W. 3328 [U.S. Dec. 1, 1975].

There is controlling precedent in this Circuit. In *Anderson v. Louisiana Dental Assoc.*, 372 F.Supp. 837 (M.D.La.), *aff'd* 502 F.2d 783 (5th Cir. 1974), the district court found the Louisiana Dental Association to be a purely private, voluntary organization that did not affect plaintiff's right to practice dentistry in the State of Louisiana. Only the State Board controlled licensing procedures. Dr. Anderson was denied membership for failure to receive the affirmative vote of a majority of the members. There was no issue of race discrimination. Dr. Anderson alleged deprivation of his First and Fourteenth Amendment rights. The district court held there was no § 1983 cause of action. This Court affirmed without a published opinion. The district court in *Anderson*, similar to the instant case, found the Association to be purely private

with no connection whatsoever, official or otherwise, with the Louisiana State Board of Dentistry.

The district court properly dismissed the complaint for lack of subject matter jurisdiction.

AFFIRMED.

### APPENDIX "B"

*Reprinted from the Journal of the American Medical Association, September 16, 1974 Volume 229  
Copyright 1974, American Medical Association*

#### [1656] EXPULSION FROM MEDICAL SOCIETY Part 2

THE FIRST article in this series discussed general principles of the law of voluntary associations. In particular, it described decisions involving medical societies. It also discussed the society's right to discipline members, and procedural requirements to ensure fairness. This article will deal with one further procedural point, the right to counsel. It will consider valid substantive grounds on which a physician may be expelled from his association.

#### *Right to Counsel*

There are no reported court decisions involving the right to counsel in medical society disciplinary hearings. However, it is generally assumed that a physician is entitled to representation by an attorney at such a hearing, even though no such right may be specifically included in the society's bylaws or hearing rules.

In many noncriminal contexts, in the past several years, courts in several states have decided that a right to counsel is so basic it cannot be denied. Cases involving commitments to mental institutions, hearings for purposes of involuntary sterilization, juvenile hearings, hearings to terminate welfare benefits, and many others have held that the person involved does have the right to immediate legal advice at the proceeding. The right to counsel is considered an integral part of elementary fairness and due process of law. Several decisions, for example, indicate that even at a private college or university a student who is faced with expulsion, as opposed to some lesser punishment, must be allowed counsel at the highest administrative level at which the matter is considered. In view of all the decisions on this point in recent years, it is highly unlikely that a court would accept the decision of a medical society to bar the attorney for the physician involved, from the hearing.

#### *Substantive Grounds for Expulsion*

As indicated in the first article in this series, grounds for expulsion from a professional association must be reasonable, must involve serious matters, and must not be whimsical or capricious. In general terms, the conduct that is the subject of the charges must be criminal in nature or involve conduct that is unprofessional or adversely reflects on the profession.

It is highly unlikely that noncriminal conduct that does not involve the member's professional practice could be used as grounds for expulsion, except in extraordinary cases. For example, even if the majority of

the members of a medical association strongly disapproved of divorce, it is highly unlikely that they could discipline a member who divorced his wife. A physician who engaged in legal, but unpopular, political activities that had nothing to do with his practice, could presumably *not* be disciplined. In fact, as will be seen in the next article in this series, even if such activities do involve medical practice, the physician's right to engage in them is specifically protected by the Constitution.

[1657] The conviction of a crime is grounds not only for expulsion from a medical society, but also for revocation of a license to practice. Most decisions that involve expulsion are also concerned with license revocation. If the crime committed involves "moral turpitude," license revocation and expulsion can occur. When professional people are involved, courts appear to be prepared to include virtually all serious crimes within that category.

A physician may be expelled from an association as well as lose his license on conviction of a crime involving the practice of medicine.<sup>1</sup> Many decisions upheld as valid and reasonable the expulsion or license revocation of physicians who performed illegal abortions.<sup>2</sup>

It is also clear that conviction of any serious offense, even if it has nothing to do with the defendant's professional practice, constitutes grounds for professional sanctions (including expulsion from

<sup>1</sup> eg. *Cadilla vs Board of Medical Examiners*, 103 Cal Rptr 455, Calif, 1972.

<sup>2</sup> eg. *Zimmerman vs Board of Regents*, 294 NYS2d 433, NY, 1968.

professional associations and revocation of license). Two recent decisions illustrating this point involve attorneys, but similar circumstances would probably justify disciplinary actions against physicians.

One instance involved an attorney who was convicted of willful failure to file income tax returns.<sup>3</sup> Even though he was found guilty of a misdemeanor instead of a felony, the Supreme Court of his state upheld his suspension from practice for a period of five years. The Court decided that conviction of any criminal offense, whether it was a misdemeanor or a felony, would justify such disciplinary action as long as moral character was involved.

In another case, an attorney was permanently disbarred after his conviction for committing a homosexual act.<sup>4</sup> The other party was a consenting adult and had no professional relationship whatever with the attorney. The action of disbarment was upheld by the Florida Supreme Court. The decision indicated that even though the crime was totally unrelated to the practice of law and was not a felony, it was sufficient indication of the attorney's moral character to justify his removal as a lawyer.

There is some indication that a physician who is acquitted in criminal court may still be disciplined by his professional peers. In this case, the charge, presumably, would be "unprofessional conduct."

<sup>3</sup> For example, in one case, a physician was charged with manslaughter as the result of a death that oc-

<sup>3</sup> *In re Lambert*, 265 NE2d 101, Ill, 1970.

<sup>4</sup> *Florida Bar Association vs Kay*, 232 So2d 378, Fla, 1970.

curred during an illegal operation.<sup>5</sup> The opinion did not specify the nature of the operation, but one might assume that it was an abortion. The jury returned a verdict of not guilty. Nevertheless, the physician was expelled by the society. This was upheld by the court. The medical society made its decision on the basis of the probability that the acts were performed. This is quite different from the requirement of a criminal trial jury to establish guilt beyond a reasonable doubt. Since expulsion from the society is not a criminal penalty, it is unlikely that the physician could successfully argue that he had been subjected to double jeopardy.

A similar outcome might be reached when the physician admits the acts charged but presents a defense in mitigation. For example, if a physician were acquitted by the court on the grounds that he was not guilty by reason of insanity, no one would seriously contest the right of a medical body to take appropriate disciplinary action against him.

The same result might occur if a physician was convicted, but his conviction was reversed by a procedural error and the prosecutor decided not to try the case again. The only decision on this subject involved an attorney. His suspension was upheld.<sup>6</sup>

#### *Crimes Not Involving Moral Turpitude*

Conviction for a minor offense generally is not sufficient grounds to revoke or suspend a physician's

<sup>5</sup> *Miller vs Hennepin County Medical Society*, 144 NW 1091, Minn, 1914.

<sup>6</sup> *State of Oklahoma ex rel Oklahoma Bar Association vs Booth*, 441 P2d 405, Okla, 1966.

license. Nor would a minor offense, not involving the physician's character, be sufficient to cause expulsion from a medical society.

The conviction of a physician for "using loud and profane language" was the basis for revoking a license in one instance. The court decided that the board of medical examiners could not assume that this was "a crime involving moral turpitude" and revoke the license without investigating the circumstances.<sup>7</sup>

A similar conclusion was reached in a case in which a physician was convicted of serving alcoholic beverages to a minor.<sup>8</sup> On the other hand, income tax evasion has been declared, on many occasions, to constitute moral turpitude in cases involving physicians.<sup>9</sup> Counterfeiting is another crime that has been sufficient to justify revocation of a physician's license.<sup>10</sup>

No decisions can be located that indicate whether a physician who is convicted of driving under the influence of alcohol has been convicted of "a crime involving moral turpitude." However, it is likely that the physician could be expelled from his medical association if the offense occurred under circumstances where lives of others were put in jeopardy, or if the physician caused an accident in which

<sup>7</sup> *Wyatt vs Cerf*, 149 P2d 309, Calif, 1944.

<sup>8</sup> *Lorenz vs Board of Medical Examiners*, 298 P2d 537, Calif, 1956.

<sup>9</sup> *Furnish vs Board of Medical Examiners*, 308 P2d 924, Calif, 1957; *In re Kindschi*, 319 P2d 824, Wash, 1958; *Morris vs Board of Medical Examiners*, 41 Cal Rptr 351, Calif, 1964.

<sup>10</sup> *State Medical Board vs Rogers*, 79 SW2d 83, Ark, 1935.

other persons were even slightly injured or property damage of any substantial amount occurred.

The next article in this series will deal with the right of a medical association to discipline members for unprofessional conduct that does not constitute a violation of the law. — ANGELA RODDEY HOLDER, JD

### APPENDIX "C"

In the United States District Court  
for the Southern District of Texas  
Houston Division

RALPH VERNON FORD, M.D.

VS.

HARRIS COUNTY MEDICAL SOCIETY, THE COMMITTEE ON ADJUDICATION AND MEDICAL TESTIMONY OF THE HARRIS COUNTY MEDICAL SOCIETY, AND NEIL D. BUIE, M.D.

### COMPLAINT

#### I.

#### NATURE OF PROCEEDING AND JURISDICTION

This is a suit seeking a Temporary Restraining Order, Preliminary and Permanent Injunctions, and Declaratory Judgment. Jurisdiction is conferred on this Court by 42 U.S.C. §1983, and the Fifth, Sixth and Fourteenth Amendments of the Constitution of the

United States of America. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by the Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States of America.

#### II.

#### THE PARTIES

The Plaintiff, Ralph Vernon Ford, M.D., is a resident of Houston, Harris County, Texas, presently residing at 5222 Stamper Way, Houston, Texas. Further, Plaintiff is a licensed physician in the State of Texas and is an active regular member of the Harris County Medical Society.

The Defendants are Harris County Medical Society, which may be served with citation through its Executive Director, James R. Hickox, at 400 Jesse Jones Library Building, Houston, Texas; The Adjudication and Medical Testimony Committee of the Harris County Medical Society, which may be served through Neil D. Buie, M.D., at 902 Frostwood, Suite 243, Houston, Texas; and Neil D. Buie, M.D., who may be served with citation at 902 Frostwood, Suite 243, Houston, Texas.

#### III.

#### RELIEF SOUGHT

This is a proceeding for Declaratory Judgment as to Plaintiff's rights and for a Temporary Restraining Order, Preliminary and Permanent Injunction, restraining Defendants from maintaining and carrying out a policy, practice, custom or usage of:

(a) Refusing to allow the Plaintiff to be represented by competent legal counsel before the various and sundry committees of the Harris County Medical Society;

(b) Refusing to allow Plaintiff the right to be represented by counsel before the Harris County Medical Society and its' various committees and refusing to allow Plaintiff to be advised by legal counsel during the proceedings before the Harris County Medical Society, refusing to allow the Plaintiff and his counsel the right to cross-examine the witnesses against him, refusing to allow the Plaintiff the right to have the testimony recorded by a competent court reporter authorized by law to administer an oath and to make a transcript of the proceedings;

(c) Refusing to allow the Plaintiff to avail himself of equal protection of the law as secured by the Fourteenth Amendment to the Constitution of the United States of America;

(d) Refusing to allow the Plaintiff substantive due process as secured by the Fourteenth Amendment of the Constitution of the United States of America;

(e) Refusing to allow the Plaintiff the rights granted to him by the Fifth and Sixth Amendments of the Constitution of the United States of America.

#### IV.

#### CONDUCT COMPLAINED OF

On February 11, 1975, Petitioner received an inquiry from the Adjudication and Medical Testimony Com-

mittee of the Harris County Medical Society which requested Petitioner's presence at a meeting scheduled February 25, 1975. (A copy of such request is marked as Exhibit "A" and attached to this Petition.) Accompanying Exhibit "A" was a letter from Lloyd Gregory, M.D., Medical Director of American General Life Insurance Company, stating in essence that the charges of Petitioner were excessive. (A copy of such letter is marked as Exhibit "B" and attached hereto.)

On February 19, 1975, Dr. Ralph V. Ford, Plaintiff herein, consulted Sam D. Rhem, a duly licensed attorney in the State of Texas. By letter to Percy Lowe, M.D., Chairman of the Committee on Ethics, Petitioner requested Sam D. Rhem to represent him before the Harris County Medical Society. (A true copy of such letter is marked Exhibit "C" and attached hereto.)

On March 4, 1975, Petitioner received a reply from William M. Sherrill, M.D., Chairman of the Executive Board, stating in effect, "that no person other than members of the Adjudication and Medical Testimony Committee, a reporter, if one is employed by the Committee, and the witness appearing before the Committee shall be present at any hearing or proceeding before the Committee". (A copy of said letter is marked as Exhibit "D" and attached hereto.)

Plaintiff would show to this Honorable Court that under the Bylaws of the Harris County Medical Society, Article XI, Section 2, Subsection (e), that all charges or complaints, be they resolved to the satisfaction of both parties, or capable of being resolved, or not, shall be turned over to the Board of Ethics with accompanying written recommendation of the

Adjudication and Medical Testimony Committee of the Harris County Medical Society.

V.

FIFTH, SIXTH AND FOURTEENTH AMENDMENTS

(a) Plaintiff would further show that according to the Bylaws of the Harris County Medical Society, that at no time are licensed attorneys allowed or permitted to represent members before the various Boards of the Harris County Medical Society, but that only licensed physicians and members of the Texas Medical Association may represent physicians before the Harris County Medical Society, and then only after charges have been filed in writing before the Board of Ethics (Bylaws of the Harris County Medical Society, Article XVIII, Section 2, Subsection (g)). Plaintiff would further show to this Honorable Court that there is no provision for the taking of sworn testimony before a duly authorized court reporter and that at the option of the Harris County Medical Society, such testimony may be taken by mere recording equipment (Bylaws of the Harris County Medical Society, Article XVIII, Section 2, Subsection (h)). It is Plaintiff's position that if the Harris County Medical Society is allowed to proceed in this manner without allowing Plaintiff his Constitutional right to counsel, to have sworn testimony recorded, and to cross-examine the witnesses against him, that he will suffer irreparable damage by not being allowed to have competent legal counsel and sworn testimony for his defense. This would be in violation of Plaintiff's Fifth and Sixth Amendment rights.

(b) Plaintiff would show to this Honorable Court that he has made a request for representation for legal counsel and that such request has been denied by the Harris County Medical Society (See Exhibit "D" attached). Plaintiff would show to this Court that he has been informed by the Harris County Medical Society that such a meeting will take place on March 25, 1975, at 8:00 o'clock P.M. (a copy of such letter has been marked Exhibit "E" and attached hereto).

(c) Plaintiff would further show to this Honorable Court that membership in the Harris County Medical Society, though voluntary, once it is obtained becomes a valuable property right. Plaintiff would show to this Court that though the Harris County Medical Society is a voluntary corporation, it has profound social, political and economic implications on the lives of its' members. Harris County Medical Society affects the economic lives of its' members in adjudicating fee disputes between third parties, insurance companies and patients. Petitioner would further show this Honorable Court that to allow the Harris County Medical Society to have such profound influence on his economic life and to deny him the right to competent legal counsel is a denial of his rights guaranteed under the Constitution and laws of the United States of America, and that his right to competent legal counsel is a valuable right to be protected by the Courts of this land.

(d) Plaintiff would show to this Court that although Plaintiff has had notice of the hearing and is given an opportunity to appear, he is not allowed to appear with legal counsel. Plaintiff believes that such a hearing could not in any way be a fair hearing since he would

not have the right to cross-examine witnesses against him or to have sworn testimony taken and legal counsel present to advise him of his rights and defenses. Furthermore, Plaintiff believes that such conduct by the Harris County Medical Society is violative of the due process clause of the Constitution of the United States of America and that such a hearing amounts to no hearing at all which would provide the Plaintiff with an opportunity to present his case and defend himself, to which he is entitled under the Constitution of the United States of America;

(e) Plaintiff would respectfully point out to this Honorable Court that if the Harris County Medical Society is allowed to proceed with its' meetings concerning Plaintiff, and Plaintiff is not allowed to have competent legal counsel present at the hearings, and further that if this Honorable Court denies a temporary restraining order, temporary injunction and permanent injunction, that Plaintiff has no other plain, speedy or adequate remedy at law. Furthermore, that if Defendants carry out their meetings without Plaintiff's representation by competent counsel, their findings most assuredly will result in action being taken to discipline Plaintiff within the Society, to force Plaintiff to adjust his fees without the opportunity of being represented by counsel to justify such fees, and would have the net result that their acts, if continued, will result, or in all reasonable probability will result, in substantial and irreparable injury to the Plaintiff's property and person, from which the Plaintiff has no plain, speedy and adequate remedy at law.

## PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited in terms of law to appear and answer herein, and that Plaintiff have relief as follows:

(a) That this Court issue a temporary restraining order enjoining the Harris County Medical Society and the Adjudication and Medical Testimony Committee of the Harris County Medical Society, whose Chairman is Neil D. Buie, M.D., from having any meetings concerning Ralph Vernon Ford, M.D., without the presence of his legal counsel and his right to have sworn testimony taken by a competent court reporter authorized by law to administer the oath;

(b) That this cause be advanced on the docket and Defendants be required to appear and show cause why a preliminary injunction and upon final hearing hereof, a permanent injunction, should not issue enjoining and restraining Defendants from having any meetings concerning Ralph Vernon Ford, M.D., without the presence of his legal counsel and his right to have sworn testimony taken by a competent court reporter authorized by law to administer the oath;

(c) Plaintiff further prays that he recover such other and further relief, general and special, legal and equitable, to which he may show himself to be justly entitled.

Respectfully submitted,

HOLLOWAY AND RHEM

Sam D. Rhem  
Attorneys for Plaintiff  
926 North Wilcrest Drive  
Houston, Texas 77024  
464-6214

THE STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared RALPH VERNON FORD, M.D., who, after being first duly sworn by me, upon his oath, stated and said:

My name is Ralph Vernon Ford, M.D., and I am the Plaintiff in the above styled and numbered cause. I have read all of the allegations in the foregoing Complaint, and of my own personal knowledge here now state that each statement contained therein is true and correct and that I have personal knowledge of the facts contained therein.

---

Ralph Vernon Ford, M.D.

SUBSCRIBED AND SWORN TO BEFORE ME this the \_\_\_\_ day of March, 1975, to certify which witness my hand and seal of office.

---

Notary Public in and for  
Harris County, Texas

NOV 3 1976

JOHN H. WOOD, JR., CLERK

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NO. 76-485

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

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RALPH VERNON FORD, M.D.,  
*Petitioner*

v.

HARRIS COUNTY MEDICAL SOCIETY, ET AL,  
*Respondents*

---

**On Petition For A Writ Of Certiorari To The United  
States Court Of Appeals For The Fifth Circuit**

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**BRIEF FOR RESPONDENTS IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT**

---

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Harris County Medical Society,  
The Committee on Adjudication  
and Medical Testimony of the  
Harris County Medical Society,  
and Neil D. Buie, M.D.*

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NO. 76-485

IN THE  
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RALPH VERNON FORD, M.D.,  
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v.

HARRIS COUNTY MEDICAL SOCIETY, ET AL,  
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On Petition For A Writ Of Certiorari To The United  
States Court Of Appeals For The Fifth Circuit

**BRIEF FOR RESPONDENTS IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT**

### OPINIONS BELOW

In addition to the opinion of the United States Court of Appeals for the Fifth Circuit reported at 535 F.2d 31 (Pet. App. A), there is also an unreported Memorandum and Order and a Final Judgment entered by the United States District Court for the Southern District

of Texas. The District Court's opinion and judgment were reproduced in the appendix to Dr. Ford's appellate brief at page 128, but have not been included in his Petition for Writ of Certiorari.

### QUESTION PRESENTED

Respondents, Harris County Medical Society, The Committee on Adjudication and Medical Testimony of the Harris County Medical Society and Neil D. Buie, M.D., respectfully submit that the "Questions Presented" contained in the Petition for a Writ of Certiorari do not correctly present the issue to be considered by this Court. Contrary to Dr. Ford's assertions, the only question in issue is whether the District Court was correct in dismissing Petitioner's claim for lack of subject matter jurisdiction, an action which was affirmed by the Fifth Circuit Court of Appeals.

### STATEMENT OF THE CASE

Petitioner's "Statement of the Case" omits significant facts necessary to gain a correct perspective of the issue adjudicated below. Respondent therefore submits this Counter-Statement.

On January 20, 1975 an inquiry was filed with the Harris County Medical Society's Adjudication and Medical Testimony Committee concerning an alleged excessive fee charged by a Society member, Dr. Ralph Vernon Ford. On February 11, 1975 the Adjudication and Medical Testimony Committee routinely sent a letter to Dr. Ford notifying him that the matter would be discussed at the next meeting and inviting him to appear at that time. Dr. Ford, through his attorney, then sought to have the

Society's Board of Ethics consider the matter and to have counsel present at the meeting when the inquiry was considered. This request was denied in accordance with the bylaws of the Society. On March 12, 1975 Dr. Ford was again notified of the date of the meeting and again invited to be present.

On March 18, 1975, prior to the scheduled meeting date, counsel for Dr. Ford filed a petition for temporary restraining order, temporary injunction and permanent injunction in the District Court of Harris County, Texas, 127th Judicial District. A hearing on the temporary injunction was held on March 20, 1975 and an Order was entered denying the petition for temporary injunction.

Thereafter, Dr. Ford commenced this action in Federal District Court alleging denial of constitutional rights under the Fifth, Sixth and Fourteenth Amendments, seeking redress under 42 U.S.C. §1983 and 28 U.S.C. §1343 (3) and asking that the Harris County Medical Society be enjoined from conducting its hearing. (Pet. App. C). Following a conference with the Court, it was agreed by the parties that the status quo would be maintained while the Court took the case under consideration. The Harris County Medical Society then filed a motion to dismiss under Rule 12(b) for lack of subject matter jurisdiction. Subsequently, and following the submission of legal memoranda on the jurisdictional issue, a Memorandum and Order and Final Judgment were entered by the Court dismissing the action for lack of subject matter jurisdiction.

Dr. Ford then perfected his appeal to the Fifth Circuit Court of Appeals. That Court denied Dr. Ford's petition for temporary injunction pending appeal on April 6, 1976. The Court affirmed the District Court and entered judg-

ment on July 19, 1976. The Fifth Circuit Court made the following findings:

1. The Harris County Medical Society is a private, voluntary organization;
2. The Society receives no funds from the State of Texas or from any governmental agency;
3. The Society has no power to issue, suspend or revoke or otherwise affect the licensing of doctors practicing in Texas. This authority rests solely with the Texas State Board of Medical Examiners;
4. A physician does not have to belong to the Society in order to practice medicine;
5. The Society has no power or authority to enforce an order from the State Board in any proceeding;
6. The facts found by the District Court clearly indicate lack of any state involvement for §1983 purposes.

*Ford v. Harris County Medical Society*, 535 F.2d 321, 322 (5th Cir. 1976)

On September 20, 1976, an application was filed with this Honorable Court requesting that the Harris County Medical Society be temporarily enjoined from conducting any meetings concerning Dr. Ford pending the filing of a Petition for Writ of Certiorari. That request was denied by Mr. Justice Powell on September 22, 1976. It is from the judgment dismissing the action for lack of subject matter jurisdiction that Dr. Ford petitions for writ of certiorari.

## REASONS FOR DENYING WRIT

### A. The merits of Petitioner's claim are not in issue

Petitioner's statement of the questions presented is incorrect. Only Petitioner's second question, which concerns subject matter jurisdiction, is properly an issue on this Petition for Writ of Certiorari. Petitioner's first question addresses the merits of his alleged claim against the Harris County Medical Society which have neither been considered by nor adjudicated in the courts below. Pursuant to defendants' Motion to Dismiss, the District Court ordered counsel to submit further legal arguments concerning the existence of "state action" on the part of the Harris County Medical Society which would confer subject matter jurisdiction on the Court under 42 U.S.C. §1983. All subsequent memoranda and orders filed in this cause were directed only to this issue—subject matter jurisdiction. The Memorandum and Order and Final Judgment were based entirely upon the failure of Dr. Ford to demonstrate that the Harris County Medical Society was acting under color of state law, which is a necessary prerequisite to assertion of a claim under 42 U.S.C. §1983, and the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972); *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Golden v. Biscayne Yacht Club*, 521 F.2d 344 (5th Cir. 1975); *Greco v. Orange Memorial Hospital Corp.*, 513 F.2d 873 (5th Cir. 1974), *cert. denied*, 96 S.Ct. 433 (1975); *Anderson v. Louisiana Dental Ass'n.*, 372 F. Supp. 837 (M.D. La.), *aff'd*, 502 F.2d 783 (5th Cir. 1974). Similarly, on appeal the only issue considered by the Court was the issue of subject matter

jurisdiction. (Pet. App. A). Having not been heard below, the merits of the case are not properly before this Court on appeal. *Hormel v. Helvering*, 312 U.S. 552, 556 (1940); *Tucker v. Dr. P. Phillips Co.*, 148 F.2d 904, 907 (5th Cir. 1945); *Publicity Building Realty Corp. v. Hannegan*, 139 F.2d 583, 587 (8th Cir. 1944).

**B. Petitioner has presented no valid reason for granting the writ**

**1. The considerations of Rule 19 are not met**

The application by Dr. Ford for writ of certiorari should be denied because no valid reason for granting review has been presented. Petitioner has not asserted any of the factors set forth in Rule 19, Rules of the Supreme Court of the United States, in support of his petition for certiorari and, in fact, none of these factors exist. There is no conflict of decision presented here nor is there an important question of federal law which has not previously been decided by this Court. To the contrary, the opinions of the courts below are entirely consistent with numerous decisions of this Court on the necessity of state action to invoke the jurisdiction of the federal courts on an issue of alleged Constitutional abridgment. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349 (1974); *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948); *Corrigan v. Buckley*, 271 U.S. 323, 330 (1926); *Civil Rights Cases*, 109 U.S. 3, 11 (1883). The District Court and the Court of Appeals properly concluded that the facts presented by Dr. Ford did not establish the requisite state action.

Further, Dr. Ford has not asserted any "special or important" reasons outside those specifically enumerated

in Rule 19 in support of his petition. The question of the existence of subject matter jurisdiction is certainly not a new or novel legal issue, nor would a decision in this case add any new dimension to the law of subject matter jurisdiction. This case turns solely on the application of well-settled legal principles to the facts presented, not on an interpretation of those legal principles.

Petitioner misconstrues the content, purpose, scope and application of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. He apparently believes that subject matter jurisdiction under these amendments is different than subject matter jurisdiction under 42 U.S.C. §1983, and he appears to suggest that these amendments do not require a finding of state or governmental action and that they, in some manner, restrict purely private conduct. The first ten amendments to the United States Constitution are directed solely against federal governmental action and do not apply to action by states or private individuals. *Corrigan v. Buckley*, 271 U.S. 323, 330 (1926); *International Ass'n of Machinists v. Sandsberry*, 277 S.W.2d 776, 780, *aff'd*, 295 S.W.2d 412 (Tex. 1956), *cert. denied*, 353 U.S. 918 (1957); *Teague v. Brotherhood of Locomotive Firemen and Enginemen*, 127 F.2d 53, 56 (6th Cir. 1942). Application of these amendments to the states is by incorporation through the due process clause of the Fourteenth Amendment. The Fourteenth Amendment is directed solely toward state action, and likewise has no application to purely private conduct. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349 (1974); *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948); *Civil Rights Cases*, 109 U.S. 3, 11 (1883). To assert a cause of action and establish jurisdiction of the federal courts, a claimant must show that the alleged abridgment of his Constitu-

tional rights was caused by one acting under color of law. Petitioner has categorically failed to establish this necessary element of his action.

## 2. The Petition is incorrectly presented

Dr. Ford has failed to comply with several items of form in presenting his Petition. While some of these are perhaps inconsequential, such as failure to include all opinions of the Courts below as required by Supreme Court Rule 23(1)(a) and failure to state in full the text of the statutes and/or constitutional provisions relied upon as required by Supreme Court Rule 23(d), others are not.

Two matters are presented in the Petition which are not part of the record in any of the lower courts and are not related to the fee complaint against Dr. Ford by American General Insurance Company on behalf of Mrs. R. C. Platzer. The first is a letter from the Harris County Medical Society regarding a hearing to be held regarding various complaints against Dr. Ford by several other of his patients. (Pet. 8). These complaints all occurred subsequent to the commencement of this lawsuit and have not been involved in or related to this action in any manner.

The second matter is a reprint from the Journal of the American Medical Association. (Pet. App. B). It is unclear what purpose is intended by including this article, but in any event, it was not part of the record below and has no relevance to this case. Further, the cases extracted from the article and cited by Petitioner (Pet. 5) involve license revocations by state licensing agencies following criminal convictions. Such situations are clearly distin-

guishable from the action taken by a purely private association, in accordance with its bylaws, against one of its members.

## CONCLUSION

The Petition fails to set forth any valid reason for granting Writ of Certiorari. The decision of the Court of Appeals does not conflict with the decisions of this Court, the decisions of other Courts of Appeals, or with any federal statute, nor is there any special or important reason for granting writ of certiorari in this action. On the contrary, both the District Court and the Court of Appeals decided the issue of subject matter jurisdiction in accordance with long-standing precedent. Respondents respectfully pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

ANDREWS, KURTH, CAMPBELL  
& JONES

By: O. Clayton Lilienstern  
O. CLAYTON LILIENSTERN  
2500 Exxon Building  
Houston, Texas 77002  
713 652-2412

*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I, O Clayton Lilienstern, do hereby certify that on this the 2d day of November, 1976, three copies of the above and foregoing Brief For Respondents In Opposition To Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit have been mailed, Certified Mail, Return Receipt Requested, in accordance with Rule 33(3)(b), Rules of the Supreme Court of the United States, to counsel for Petitioner, Dr. Sam D. Rhem, Suite 216, Town & Country Bank Building, Houston, Texas 77024.

O. Clayton Lilienstern  
O. CLAYTON LILIENSTERN